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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

No. RS 1(1)/70-*Com.*—The following report of the Joint Committee of the House of Parliament on the Bill to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto was prsented to the Rajya Sabha on the 9th November, 1970:—

COMPOSITION OF THE JOINT COMMITTEE

MEMBERS

Rajya Sabha

1. Shri Mulka Govinda Reddy—*Chairman**.
2. Dr. (Mrs.) Mangladevi Talwar.
3. Shri M. Srinivasa Reddy**.
4. Shrimati Usha Barthakur.
5. Shri Krishan Kant.
6. Shri Sawaisingh Sisodia**.

*Ceased to be a member and Chairman of the Committee consequent upon his retirement from the membership of the Rajya Sabha on the 2nd April, 1970. Re-elected to the Rajya Sabha on the 3rd April, 1970. Re-appointed as a member of the Committee on the 14th May, 1970. Appointed again as Chairman of the Committee on the 15th May, 1970.

**Appointed on the 14th May, 1970, in the vacancies caused by the retirement of Shri Narayan Patra and Dr. S. Chandrasekhar, from the membership of the Rajya Sabha on the 2nd April, 1970.

7. Shri K. P. Mallikarjunudu.
8. Shrimati Bindumati Devi.
9. Shri Niranjan Varma.
10. Shri G. Gopinathan Nair.
11. Shri S. A. Khaja Mohideen.

Lok Sabha

12. Shri Vidya Dhar Bajpai.
13. Shri Gangacharan Dixit.
14. Shri Ganesh Ghosh.
15. Shri Kameshwar Singh.
16. Shri S. Kandappan.
17. Dr. Karni Singh.
18. Shri Kinder Lal.
19. Shri P. Viswambharan.
20. Shri N. R. Laskar.
21. Hazi Lutfal Haque.
22. Shri M. R. Masani.
23. Shri Mohammad Yusuf.
24. Shri B. S. Murthy.
25. Shrimati Shakuntala Nayar.
26. Dr. Sushila Nayar.
27. Shri Partap Singh.
28. Shri Ram Swarup.
29. Dr. M. Santosham.
30. Shrimati Tara Sapre.
31. Shri M. R. Sharma.
32. Shri Babunath Singh.
33. Shri Jageshwar Yadav.

REPRESENTATIVE OF THE MINISTRIES

Ministry of Law

1. Shri S. K. Maitra, Joint Secretary and Legislative Counsel.
2. Shri R. N. Shinghal, Deputy Legislative Counsel.
3. Shri S. Ramaiah, Deputy Legislative Counsel.

Ministry of Health and Family Planning and Works, Housing and Urban Development

1. Shri R. N. Madhok, Joint Secretary.
2. Dr. (Kumari) L. V. Phatak, Commissioner.

3. Shri D. N. Chaudhari, Deputy Secretary.
4. Dr. I. Bhooshana Rao, Deputy Commissioner.
5. Dr. G. P. Sen Gupta, Deputy Commissioner.
6. Dr. S. V. Raja Rao, Assistant Commissioner.
7. Dr. (Smt.) S. F. Jalnawalla, Deputy Director.

SECRETARIAT

1. Shri S. S. Bhalerao, Joint Secretary.
2. Shri S. P. Ganguly, Deputy Secretary.
3. Shri Kewal Krishan, Deputy Secretary.
4. Shri M. K. Jain, Under Secretary.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto, was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 17th November, 1969. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Dr. S. Chandrasekhar the then Minister of State in the Ministry of Health and Family Planning and Works Housing and Urban Development on the 3rd December, 1969, and was adopted by the House on the 8th December, 1969 (Appendix I).

3. The Lok Sabha discussed and concurred in the motion on the 24th December, 1969 (Appendix II) and the message from the Lok Sabha was reported to the Rajya Sabha on the same day.

4. The Committee held 19 sittings in all.

5. At their first sitting held on the 30th January, 1970, the Committee decided that a Press communique be issued inviting memoranda on the Bill from various associations, organizations and individuals interested in the subject matter of the Bill and advising them to send the same to the Rajya Sabha Secretariat by the 20th February, 1970. The Committee further decided to call witnesses for giving oral evidence on the Bill and authorised the Chairman to decide, after examining all the memoranda, as to who might be invited for the purpose. The Chairman also requested members to suggest names of persons who might be invited for giving oral evidence before the Committee.

6. The Committee received memoranda, suggestions etc. on the Bill from twenty-one persons/associations (Appendix III).

7. The Committee heard the evidence tendered by twenty-six witnesses (Appendix IV).

8. The Committee decided that the evidence tendered before them should be printed and laid on the Table in both the Houses.

9. The Report of the Committee was to be presented to the House by the first day of the Seventy-first session of the Rajya Sabha. The Committee were, however, granted extension of time first, upto the first day of the Seventy-third (July-August, 1970) Session and then again upto the first day of the Seventy-fourth (November-December, 1970) Session of the Rajya Sabha.

*Published in Part II, Section 2 of the Gazette of India Extraordinary, dated 17th November, 1969.

10. The Committee considered and adopted the Draft Report at their sitting held on the 3rd November, 1970.

11. The principal changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs.

CLAUSE 1

New Clause 6 inserted in the Bill provides for framing of rules by the Central Government to carry out the provisions of the Act generally and, in particular, to prescribe experience or training which a registered medical practitioner should have if he intends to terminate any pregnancy under the Act. Further, Clause 7 (original Clause 6) empowers the State Governments to make regulations on certain matters provided in the Act. As it might take some time before these rules and regulations are framed and finalised by the Governments concerned, the Committee feel that practical difficulties would arise if the Act came into operation immediately. The Committee, therefore, feel that the Act should come into operation after the rules and regulations have been framed by the Governments concerned. A new sub-clause has, therefore, been inserted empowering the Central Government to appoint, by notification in the Official Gazette, a date on which the Act will come into force.

CLAUSE 2

Paragraph (a).—Under sub-clause (4) of clause 3, the consent of the guardian has been made obligatory for the termination of pregnancy of a woman when the latter is either a minor or a lunatic. In the circumstances, the expression "guardian" has been so defined by the Committee as to cover not only the guardian of a minor but also the guardian of a lunatic.

Further, the Committee are of the opinion that, for the purposes of this Act, it would be sufficient if the person having the care of the person of the minor or lunatic is defined as the guardian. The Committee have, therefore, omitted reference to the person having the care of the property of the minor, so that a person having the care of the property only of the minor or lunatic may not exercise the powers conferred on the guardian by the Act.

Paragraph (d).—As the termination of pregnancy is a delicate operation and, at times, involves serious complications and even danger to the life of the pregnant woman, the Committee are of the opinion that such an operation should be carried out only by those registered medical practitioners who have the requisite experience or training in gynaecology and obstetrics and that the experience or training which a registered medical practitioner must possess in this regard, should be prescribed by rules made by the Central Government. Accordingly, the Committee have amended the definition of the expression "registered medical practitioner".

CLAUSE 3

The Committee are of the opinion that for the termination of a pregnancy, where the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks it is not necessary that two registered medical

practitioners should act together. It would suffice if, in such a case, the opinion of two registered medical practitioners, formed in good faith, is in favour of termination of the pregnancy and the actual operation is carried out by a single registered medical practitioner. The Committee have amended sub-clause (2) of the clause to clarify the position.

Original sub-clause (4) made separate provisions for consent to be obtained for terminating pregnancies of a married woman when such pregnancy is alleged to have been caused by rape, or of a widow who is a minor or lunatic or of an unmarried girl who had not attained the age of 18 years or of an unmarried woman who, being above the age of 18 years, was a lunatic. The Committee feel that except in the case of termination of pregnancy of a woman who has not attained the age of 18 years or who is a lunatic, obtaining of such a consent should not be made obligatory. The Committee have, therefore, substituted the revised paragraph (a) for the original paragraphs (a), (b), (c) and (d) of the sub-clause.

The other changes made in the clause are of a verbal or clarifying nature.

CLAUSE 5

The Committee are of the opinion that the relaxation provided in this Clause in the matter of length of pregnancy should extend only to cases where termination of the pregnancy is necessary to save the life of the pregnant woman and that it should not extend to cases where it is necessary to terminate a pregnancy to save permanent grave injury to the physical or mental health of the pregnant woman. Necessary changes have, therefore, been made in the Clause.

In view of the amendment in paragraph (d) of Clause 2, registered medical practitioner referred to in this clause would mean a registered medical practitioner who has experience or training in gynaecology and obstetrics. The Committee feel that where the termination of a pregnancy is immediately necessary to save the life of the pregnant woman, the provision with regard to experience or training in gynaecology and obstetrics should not be insisted upon so that such pregnancy may be terminated, where necessary, by a general practitioner. An explanation to that effect has been added to the Clause.

CLAUSE 6 (New)

This new clause is consequential to the amendment carried out in paragraph (d) of Clause 2.

The other changes made in the Bill are of a consequential or drafting nature.

12. For convenience and also for reference purposes, an Annexure detailing the clauses in the Bill as introduced in the Rajya Sabha which have now been amended by the Joint Committee has been added.

13. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
November 3, 1970.

MULKA GOVINDA REDDY,
Chairman of the Joint Committee.

MINUTES OF DISSENT

I

Abortions can be classified under three categories:—

1. Natural or spontaneous abortion;
2. Therapeutic abortion;
3. Criminal Abortion.

Spontaneous or natural abortions are caused unintentionally by things like desease. Therapeutic abortions are induced in good faith by medical practitioners when they are satisfied that the continuance of pregnancy will endanger the patient's life or seriously impair her health. Criminal abortions are those produced under circumstances which afford no lawful justification.

The subject of abortions has humanitarian, ethical, moral, social, eugenic, sociological, medical and legal ramifications. While medical men are concerned with its medical aspects, lawyers are concerned with its legal side. But legislators or law-makers are concerned with all the aspects and particularly with its social, sociological and humanitarian aspects.

The present Bill is intended to enlarge the area of therapeutic abortions and reduce the area of criminal ones. Under the existing law as contained in sections 312 to 316 of the Indian Penal Code an abortion is legally permissible when it is done only to save the life of the mother and with her consent. The area of legal permissibility is sought to be widened by means of this Bill on grounds of (i) health (ii) humanitarianism; and (iii) eugenics as mentioned in the Statement of Objects and Reasons.

The first question to be therefore considered is whether such liberalisation of abortion is justified or not on ethical, social, medical and other grounds. When the Bill was sent to various States for their comments, some States opposed liberalisation while some other States advised caution. A number of emminent witnesses gave evidences before the Committee which revealed a wide variety of divergent opinions. Some witnesses went to the extent of saying that any further liberalisation will lead to promiscuity in sexual life and undermine the moral foundations of our society. Some are of the view that in view of the grossly inadequate medical facilities available in our country, liberalisation on a wider scale should not be permitted. Some other witnesses held the view that in spite of great advances in medical science, the operation of abortion is fraught with risks since it is done in an invisible region and hence any liberalisation should be as limited as far possible. It is revealed in the evidence that abortions should not be permitted in the case of unmarried woman, though it is allowed in the case of married

woman. Some witnesses on the other hand asserted that the matter should be left entirely to the choice of the pregnant woman, and she must be permitted on her request to have an induced abortion, irrespective of other considerations. A reconciliation of all these views and the knowledge of the experience of other advanced countries of the world, in this matter will however lead us to the conclusion that some kind of liberalisation of abortion is not unwarranted, under the existing circumstances. The three grounds mentioned in the objects and reasons are good enough, in my opinion, to enlarge the scope of legal abortions. To go beyond these grounds is to my mind, now unjustifiable.

Unfortunately, an attempt is made in the Bill to use this as a family planning measure by introducing Explanation II in sub Section (2) of Sections 3. If abortions are regarded as a part of family planning I have no doubt that the basis of the entire edifice of family planning will collapse. Let me make it clear that it is not my personal view. My view is fortified by eminent medical men who tendered evidence before the Committee. Dr. S. B. Anklesaria, President of the Federation of Obstetrics and Gynaecological Societies of India, Bombay and Dr. B. N. Purandare another representative of that Federation are definite that abortion should not be resorted to as a family planning method, since it undermines the scheme of family planning and encourages abortions which are more risky than is ordinarily imagined. Of course, they said it may not lead to such consequences if the woman is to be compulsorily sterilised in case of abortion after the birth of two or three children. In view of our present constitutional provisions to make sterilisation compulsory is not permissible. Hence I am of opinion that Explanation II in sub-section (2) of Section 3 should be deleted.

I have no doubt that liberalisation of abortion in the case of unmarried woman tends to loosen the morals and therefore I would like to suggest that appropriate provisions should be incorporated in the Bill by which unmarried woman should be prevented from undergoing abortion except in cases of rape and danger to life.

In cases of rape it is enough under the Bill if the woman alleges rape and the pregnancy can be terminated with impunity. I should think that there should be a Committee of persons appointed by the Government to find whether the pregnancy is the result of rape. This view is fortified not only by the opinion of some witnesses but also by the laws obtaining in countries like Denmark.

Another change I wanted to make is that two Registered Medical Practitioners are necessary to terminate the pregnancy even in cases where the length of pregnancy does not exceed 12 weeks. While conceeding that termination of pregnancy before 12 weeks is relatively speaking less risky than the termination after 12 weeks it is not safe in my opinion to entrust the operation to only one Registered Medical Practitioner. Any emergency may arise during the operation. Because it is an abdominal operation in an invisible region at least to minimise risks and safeguard against any possible complications the presence of two registered medical practitioners is highly necessary. It is irresponsible to risk the life of a pregnant woman and every possible precaution and safeguard ought to be taken.

On eugenic grounds provisions is made in item 2 of clause 2 of section 3 for medical termination of pregnancy if the doctor or doctors opined that there is a substantial risk, that if the child were born he would suffer from such physical or mental abnormalities as to be seriously handicapped. From the evidence tendered it is clear that excepting some cases it is not easy to foresee whether the child to be born will be an abnormal one. It is not safe to entrust the decision to the registered medical practitioner or practitioners who undertake operations. I should think that a provision will have to be made through the Bill for the constitution of an expert Committee to decide the issue.

During the consideration stage of the Bill by the Joint Committee I gave notice of some amendments which were accepted by the honourable Shri B. S. Murthy for which I am grateful to him. I would like to urge once again upon the Government to consider the various suggestions put forward by me in this minute of dissent and introduce appropriate amendments.

K. P. MALLIKARJUNUDU.

II

Having heard the scholarly thesis and reasons both of specialists, medical men and social workers, I am ever more convinced that the Bill namely Termination of Pregnancy through surgical treatment or through any artificial means is harmful and will not serve the purpose which it aims to fulfil. Apart from the reasons that are influenced by my religious convictions, I have been reinforced in my conclusions consequent on expert and convincing evidence tendered by eminent medical authorities and gynaecologists.

The one aspect that kept me ever vigilant in the course of our enquiry relates to the question whether we are justified to put an end to a life just impregnated, but has no voice. The argument that the life cells do not come into existence till after 12 or 20 weeks, in my opinion, is spurious and has been challenged by medical authorities. It has been unequivocally and categorically expressed that the termination of pregnancy even at the earliest stage is nothing short of murder. We are terminating a life at a certain stage and we should be honest to own that we are putting an end to life of a human specie by unnatural means.

The serious aspect dealt with in the course of enquiry, indicated that this artificial method—surgical termination—invariably affects the health of the mother. It is possible that the treatment may afford an immediate solution of a problem, but the complication it sets in, continues and exhibits itself in various forms and physical complaints to the mother.

Our standards of ethics and morality have sprung from our religious convictions and sanctions. As a matter of fact, we have to accept that evolution and human civilisation owes completely to religions and to those basic beliefs that have shaped human conduct from time immemorial. It is not possible to reconcile ourselves to such theories that we could solve problems of human lives by artificial interference with nature. As a Muslim, I have to submit myself implicitly to the *Will of the Supreme Being, who is All Wise and knows best.* It is His Will that procreation takes place and who are we to interfere into His domain?

Apart from my own convictions and beliefs, we belong to a country that has produced great savants, saints and *rishis.* Their teachings have set up a pattern of society that is our pride. The doctrine of *Ahimsa* repeated by Gandhiji is there before us that reminds our ancient culture, and hence my opposition to the Bill is based both on medical as well as on cultural grounds.

I would like to make it clear that my conclusions have obtained concurrence of such eminent authorities like Dr. Marikar and Dr. D. Kulanday. Dr. Marikar's authority is rather unique. Besides being a reputed gynaecologist, she was an Administrator and had the portfolio of Family Planning under her jurisdiction. Her opposition to the Bill was for very rational reasons, which should convince the Committee. She maintained that surgical treatment for abortions conducted even by experts and specialists involves certain amount of risk, with ultimate danger to the health of the parent. She was emphatic that we are absolutely unprepared to deliberate such a measure since we totally lack in adequate equipment in major number of hospitals and dispensaries. To think of such a measure with such lack of equipment and untrained personnel, might in her view,—prove more harmful and could never be expected to secure the objective which is sought for by the Bill. On the contrary, she was right in her conclusion that instead of solving the issue by medical termination of pregnancy, the measure would further complicate and the parent will be landed into complications and miseries for life.

Another aspect that was emphasised by some of the witnesses was that this Bill will liberalise the process, giving an opportunity to unscrupulous persons and illeterate *dais* to openly indulge in the practice of playing with human lives, specially lured by economic considerations. Above all, this measure will further sink and denigrate our moral standards.

I therefore dissent and oppose the passage of the Bill namely Termination of Pregnancy through surgical treatment.

S. A. KHAJA MOHIDEEN.

III

इसमें संदेह की गुंजाइश नहीं है कि वर्तमान विधेयक देश की बढ़ती हुई जन-संख्या को सीमित करने के उद्देश से लाया गया प्रतीत होता है। यद्यपि यह बात भी सही है कि इस बात को प्रमुखता से निर्दशित नहीं किया गया है। तब भी उपरोक्त प्रकाश में इस विधेयक पर विचार करना आवश्यक है।

देश में अंग्रेजी पढ़े लिखे व्यक्तियों की संख्या केवल कुछ प्रतिशत ही है। परन्तु इस विधेयक में जो साक्षियां ली गई हैं वे केवल उन अंग्रेजी पढ़े लिखे व्यक्तियों की है जो साधारणतः पश्चिमी सभ्यता से प्रभावित हैं। अतः इस विषय में उनकी साक्षियों को देश की विचारधारा का प्रतिनिधित्व करने वाला नहीं माना जा सकता।

यह भी निर्विवाद और सत्य है कि हमारे देश की पृष्ठभूमि; परम्पराएं; और संस्कृति पश्चिमीय देशों से भिन्न है। हमारा समाज वर्तमान में जापान तथा इंगलैंड आदि देशों का समाज सुधार के रूप में अंधानुकरण करने का पक्षपाती नहीं है।

मूल विधेयक से प्रवर समिति में पास किये जाने तक इस विधेयक के स्वरूप में अनेक परिवर्तन हुए हैं। परन्तु भारत की वर्तमान परिस्थिति में हमें मूल विधेयक से ही मतभेद है। हमारे देश में भ्रूण-हत्या को महान पाप बतलाया गया है और भ्रूण हत्या करने वाले को दोषी मान कर कठोर दंड देने की व्यवस्था दी है।

भारतीय कानून के रूप में प्रचलित मनस्मृति में अध्याय 11 श्लोक 87 में "हत्वागर्भम विज्ञात मेत देवव्रत चरेत" कहकर अज्ञात गर्भ को गिराना वर्जनीय बतलाया है। इसी प्रकार से विदुर नीति के अध्याय 3 में जिन 18 व्यक्तियों को ब्रह्म हत्या का महापात की गिना गया है उसमें आठवें स्थान पर "औषधादिक देकर गर्भ गिराने का भी उल्लेख है। कहने की आवश्यकता नहीं कि 'आदिक' में शल्य क्रिया का भी समावेश है।

इसी परम्परागत विचारधारा का समादर करते हुए अंग्रेज शासकों तक ने भ्रूण हत्या के अपराधी को भारतीय दंड विधान में कठोर दंड देने का नियम बनाया था।

इस बात से सब सहमत हैं--चाहे उसका कारण कुछ भी हो कि देश में तीव्र गति से चरित्र का ह्रास हो रहा है। तथा तथा-कथित प्रगति के नाम पर नैतिक बंधन टूटते चले जा रहे हैं। अतः यदि देश की वर्तमान अवस्था में गर्भपात करने की छूट्टी कर दी जायेगी तो उसे कितने ही कठोर नियमों में क्यों न जकड़ दिया जावे तो भी चरित्रहीन व्यक्ति उससे अपना निर्दिष्ट उद्देश्य पूरा करने के लिए पापाचरण का पूरा पूरा लाभ उठायेंगे।

पश्चिम के देशों से हमारे देश की तुलना नहीं की जा सकती, वहां पर उन्मुक्त प्रेम, वासना और परित्याग के अलग नियम व परम्परायें हैं ये देश तो अब यौन स्वच्छंदता तक को बढ़ावा देने लगे हैं। परन्तु हमारे विनम्र देश में पुत्रियां और कुलवधुएं साधारणतः खुले स्थानों में चुम्बन आलिंगन को भी अभिशाप समझती हैं। अतः यदि ऐसे समाज में गर्भपात करने की इजाजत दे दी गई तो उसका वर्तमान सामाजिक ढांचे पर निकृष्ट प्रभाव पड़े बिना नहीं रह सकता। और सतत जाने वाली सभ्य सामाजिक व्यवस्थाओं को तत्काल टूट जाने का अंदेशा उत्पन्न हो जावेगा।

वर्तमान विधेयक में प्रवर समिति ने 26 गवाहियां ली हैं। इसमें से लगभग, 7, 8 साक्षियों ने ही केवल इसके औचित्य का खुल कर समर्थन किया है। परन्तु अधिकांश साक्षियों ने चिन्ता प्रकट की है। जिन साक्षियों ने इस विधेयक का स्वागत भी किया है उनमें से भी श्री शांतिलाल शाह, डा० श्रीमती डेजी कुलांडा आदि ने बीस सप्ताह के बाद के गर्भ को गिराने की तीव्र भर्त्सना की है। जहां डा० कुमारी शिवदुआ ने स्पष्ट बतलाया है कि ऐसे सामाजिक कार्यों में विधान बनाने से कोई लाभ नहीं होगा; वहां बम्बई की फेडरेशन आफ आसट्रेटिक तथा गायनाकालाजिकल सौ० आफ

इंडिया के प्रतिनिधियों ने तथा डा० श्रीमती एच० एन० शर्मा ने ऐसे मामलों में स्टारिलिजेशन करने की सलाह दी है ।

अखिल भारतीय महिला सम्मेलन की प्रतिनिधि श्रीमती लक्ष्मी रघुरामैया तथा श्री लीला दामोदरन और डा० श्रीमती उमा अग्रवाल ने स्पष्ट रूप से इस प्रकार के गर्भपात का उपयोग फैमिली प्लानिंग के लिये न करने देने की सिफारिश की है ।

इंडियन मेडीकल एसोसिएशन के प्रतिनिधि डा० श्री मल्ला ने स्वीकार किया है कि गर्भपात का असली उद्देश्य यह है कि अनावश्यक बच्चे पैदा न हों परन्तु श्रीमती डा० डेजी ने इन गर्भस्थ शिशुओं के हक की वकालत की है । यही नहीं दक्षिण भारत के चर्च की सीनड-सदस्या प्रमुख श्रीमती डा० डी० एल० गोपाल रत्नम ने इस गर्भस्थ असहाय शिशुओं के जीवन को पवित्रतम माना है । उसने कठोर चेतावनी देते हुए कहा है कि उदरस्था शिशुओं की हत्या एक जघन्य अपराध है ।

डा० श्रीमती सुमति कानिटकर ने संदेह व्यक्त करते हुए कहा कि इस बात की क्या गारन्टी है कि द्रव्य या लोभ के वशीभूत होकर कुछ लोग सद्भाव का ही दुरुपयोग न करने लग जावें । डा० श्री तलवार ने तो इस युग के चरित्र और सिनेमा आदि के अहे प्रदर्शन की ओर निंदा की है ।

इन सब परिस्थितियों में उपरोक्त साक्षियों के कथनों के आधार पर वर्तमान स्थिति में गर्भपात को कानूनी वैधता का स्वरुप देना समाज और देश के लिये अत्यन्त हानिकारक सिद्ध होगा ।

इन गुण-दोषों पर विचार करते समय विधेयक के स्वरूप पर भी दो शब्द लिखना सर्वथा उचित होगा । धारा प्रथम की उपधारा 2 के अनुसार यह विधेयक जम्मू तथा काश्मीर राज्य पर लागू न होगा । किन्तु जब कि जम्मू और काश्मीर राज्य भारत का एक अटट अंग है तो यदि यह एक अच्छा और शुभ कार्य है तो वहां की जनता को इसके लाभ से वंचित कर देना कौन सा न्याय है ? यदि कोई विधान बाधक है तो उसे दूर करके इसे वहां भी लागू करना चाहिये था । वास्तव में बात यह है कि फेमिली प्लानिंग के कार्यक्रमों को भारत के अल्प संख्यक वर्ग ने कभी भी खुले दिल से नहीं सराहा है ।

भारतीय दण्ड विधान की धारा 312 में जब स्पष्ट उल्लेख है कि मां की प्राण रक्षा के लिये गर्भपात कराना वैध है तो फिर वर्तमान विधेयक में धारा 3 उपधारा 2 के "बी" चरण के प्रथम खंड में उसी बात को दोहराने में क्या सार्थकता है ? हां, उसके आगे के शब्द "उसके शारीरिक अथवा मानसिक स्वास्थ्य को भयंकर खतरा" बतला कर वर्णन किया गया है परन्तु इस छूट से चरित्रहीन या प्रतिगामी व्यक्तियों को खुले व्यभिचार में रत रह कर "मानसिक स्वास्थ्य के भयंकर खतरे" के नाम पर लगातार गर्भपात कराते रहने की खुली छूट मिल जावेगी । केवल डाक्टर को साधना भर शेष रह जावेगा जो आजकल के युग में कोई कठिन काम नहीं है ।

इसी प्रकार इसी धारा के दूसरे खंड में "शारीरिक और मानसिक असाधारणताओं" (abnormalities) का नाम लेकर न केवल उदरस्थ शिशुओं का ही गला घोंट दिया गया है अपितु आगे भविष्य में वैज्ञानिक तौर तरीके से यदि इन विकृत अंगों और मस्तिष्कों का यदि कहीं उपचार संभव हो तो उससे संभावनाओं का ही गला घोंट दिया गया है । दूसरे शब्दों में रोगों का उपचार न करते हुए रोगियों को ही जन्नुमरशीद फरमाने की कोशिश कर दी गई है ।

हमें तो आश्चर्य है, परन्तु शायद विधेयक प्रस्तुतकर्त्ताओं को कोई ऐसी वीर स्त्री मिल जाये जो व्यभिचार के पश्चात् तस्करण से उत्पन्न गर्भस्थ शिशु से नजात पाने के लिये गर्भपात करा दे । साधारणतः यह वस्तु-जगत में संभव नहीं है । यह अनूठा उदाहरण इसी धारा के प्रथम स्पष्टीकरण में मिल जावेगा ।

इसी धारा का दूसरा स्पष्टीकरण बिल्कुल साफ है और इस विधेयक के लाने का उद्देश्य इसमें साफ-साफ बता दिया गया है । यदि गर्भ निरोधक दवाइयां या अन्य उपाय असफल हो गये हो तो फिर भ्रूण-नाश के लिये खुला मैदान है ।

धारा 3 की उपधारा 4 के अधीन 18 वर्ष की आयु से अधिक कुमारी या किसी विधवा को इस नियम के कारण गर्भपात कराने की पूरी आजादी हो जावेगी ।

धारा पांच अभी भी विवादास्पद है और उसका कोई भी स्वरूप यह टिप्पणी लिखते समय तक विधेयक प्रस्तुतकर्त्ता अथवा विधि मंत्रालय ने हमारे सामने नहीं रखा है । अतएव उस पर विचार करना संभव नहीं है ।

संक्षेप में उपरोक्त कारणों से यह विधेयक इस देश के लिये लाभदायक न होने से पारित होने योग्य नहीं है । अतः असहमति की टिप्पणी प्रस्तुत है ।

निरंजन वर्मा

दिनांक 5-11-70

IV

मेरे विचार से गर्भ की चिकित्सीय समाप्ति विधेयक 1969 नितान्त निरर्थक, अनैतिकता को बढ़ावा देने वाला एवं भारतीय धर्मों और भारतीय संस्कृति पर कुठाराघात करने वाला है अस्तु मैं इस विधेयक का पूर्णतया विरोध करती हूं ।

भ्रूण हत्या जैसे घृणित और नृशंस अपराध को भारत जैसे देश में, जो कि धर्म, सभ्यता, उदारता एंव मानवीय गणों में संसार में सर्वोपरि रहा है, सबका मार्गदर्शक रहा है, आज वैधानिक स्वरूप देने की बात हो रही है यह परम आश्चर्य, परम खेद और परम लज्जास्पद विषय है ।

इस विधेयक से निश्चय ही हमारी महिलाओं और हमारे पुरुषों का बड़ा ही नैतिक पतन होगा । महिलायें विशेषतौर से स्त्रीसुलभ कोमलता से रहित अत्यन्त कठोर हृदय व हिंसक प्रवृत्ति की होती जायेंगी । इस विधेयक को लाने के लिए हमें एक दिन अवश्य ही पछताना पड़ेगा किन्तु उस समय हम कदाचित चाहने पर भी, हम अपने हाथों नष्ट की हुई अपनी संस्कृति और खोया हुआ धर्म वापस नहीं ला सकेंगे ।

एक समय वह था कि हमारे विचार अत्यन्त ऊंचे हुआ करते थे और हमारे आचरण भी तदनुकूल ही हुआ करते थे । कुछ समय बाद हमारे विचार तो वही रहे पर आचरण से हम नीचे गिर गये । किन्तु आज हम उतना गिर गये कि विचारों में भी ऊंचे नहीं रह गये । धर्मों से ऊंचे पंहुचने की कौन कहे हमारे विचारों में भी इतना अधोपतन हुआ कि आज हम गर्भपात जैसे महापाप के लिए भी मृत्यु दण्ड या आजन्म कारावास जैसे दण्ड का विधान न रख कर उसे विधायक द्वारा वैध बनाकर क्रूर बर्बरता को प्रोत्साहन देने को तत्पर हैं । आज हमारा विचार आत्म-संयम, नियम, शिक्षा व धर्म ज्ञान आदि उपायों तक न पंहुच कर गर्भपात जैसे उपाय तक ही रह गये हैं । हम यह भूल गये हैं कि हत्या हत्या है । वह चाहे पेट के अन्दर के शिशू की हो या पेट के बाहर की ।

आग लगाता रहे और उसे बझाता रहे, खाना खाता रहे और उसे उगलता रहे, गर्भ होते रहें और उसे गिराते रहें यह कहां की बुद्धिमानी है, कौन सा ज्ञानमार्ग है और किस किस देश की सभ्यता और धर्म है ? हमें तो ऐसा मार्ग ढूंढना चाहिए कि जिससे स्त्रियां अनावश्यक गर्भ धारण ही न करें और गर्भपात जैसा नीच कार्य इसका निदान नहीं है ।

जो विवाहिता बच्चे नहीं चाहतीं और जो समझती हैं कि बच्चे होने से उनका मनःस्ताप बढ़ेगा तो उन्हें बच्चों की इच्छित संख्या हो जाने के बाद ही स्टर्नाईज करवा लेना चाहिए ताकि गर्भ धारण व गर्भपात की नौबत ही न आवे ।

बलात्संभोत्पन्न गर्भ वाली लड़कियों व महिलाओं के लिए समाज-कल्याण विभाग एवं सभी समाज सेविकों को उनकी सेवा करनी चाहिए । उन्हें शिक्षित कर जीविकोपार्जन योग्य बनाना चाहिए और उनके बच्चों का भी लालन पालन कर उन्हें योग्य नागरिक बनाना चाहिए । समय परिवर्तन के साथ लोगों के हृदयों में भी परिवर्तन हो गया है अस्तु हो सकता है । कुछ परोपकारी लोग प्रसन्नता से उन महिलाओं से विवाह तक को तैयार हो जायें । गर्भ-पात जैसा पाप क्यों किया जायें ? समाज में कमी हो तो समाज सुधार ही क्यों न किया जाये ताकि समाज में ऐसों के लिए उचित स्थान रहे । इसके साथ साथ बलात्कारी व्यक्ति को आजन्म कारावास से कम दण्ड न मिलना चाहिए ।

रह गई वे महिलाऐं जो स्वेच्छा से दुराचार और पतन के गड्ढे में गिरती हैं और गर्भिणी हो जाती हैं । वे सर्वथा उपेक्षा और दण्ड के योग्य हैं । उन्हें अपनी भूल का अनुभव करने ही देना चाहिए । जब बच्चे होंगे, उनकी जिम्मेदारी उठानी पड़ेगी तभी ऐसी महिलाओं की आंखें खुलेंगी ।

गर्भपात महिलाओं के स्वास्थ्य की दृष्टि से परम हानिकारक है । इससे बहुधा रक्त स्राव (हेमरेज), पागलपन, कोई अंग बेकार और स्मृति खो जाना आदि अनेक दुष्परिणाम होते देखे गये हैं ।

मानवता की दृष्टि से बलात्कार की शिकार महिलाओं व उनके बच्चों की सब प्रकार से सहायता करना आवश्यक है । किन्तु नामी या बदनामी के भय से भ्रूण हत्या करवाना कहां की मानवता है ? किस मां का मन बच्चे को देख कर पुलकित नहीं हो जाता ? बच्चे जैसी ईश्वरीय देन किस को सुखद नहीं है ? फिर उसी की निर्मम हत्या किस देश की मानवता में सम्मिलित है ?

पागल से पागल ही बच्चे होंगे, यह सत्य नहीं है और कोई भी डाक्टर इसे प्रमाणित नहीं कर सकता । मैं कई पागल महिलाओं को जानती हूं कि जिनके बच्चे एकदम स्वस्थ हैं और आज बड़े अच्छे पदों पर कार्य कर रहे हैं अस्तु कोई स्त्री पागल है इसलिए उसका गर्भपात कराया जाय यह सर्वथा अनुचित है ।

सृजन विज्ञान का आधार भी इसी प्रकार अनिश्चित है । यह जानना सम्भव नहीं है कि बच्चा होगा तो अपंग ही होगा अस्तु इस सम्बन्ध में गर्भपात की अनुमति नहीं होनी चाहिए । किन्तु यदि कोई बच्चा विकलांग हो भी तो उसकी हत्या क्यों की जाये? हमारे अस्पताल किस लिए हैं ? फिर हमें यह भी नहीं भूलना चाहिए कि एक अन्धी महिला ने संसार में वह कार्य किया कि आंख वाले भी शायद न कर सकते । उसने संसार के सारे अंधों के लिए अत्यन्त प्रशंसनीय कार्य किया । आज सारे अन्धे उन्हीं के मार्ग दर्शन से शिक्षित होकर अपने जीवन निर्वाह योग्य बन गये हैं ।

भारतीय दण्ड संहिता में यह विधान दिया ही हुआ है कि यदि मां के जीवन बचाने में बच्चा नष्ट हो जाये तो यह दण्डनीय नहीं माना जायेगा अस्तु जहां तक मां के जीवन रक्षा की बात है यह प्राविधान यथेष्ट है । इस विधेयक को लाने की कोई प्रत्यक्ष आवश्यकता नहीं है । विधेयक पढ़ने से स्पष्ट लगता है कि सरकार मां के स्वास्थ्य रक्षा की आड़ में परिवार नियोजन के लिये ही विधेयक लाना चाहती है । सामाजिक और धार्मिक विद्रोह के भय से ही मां की जीवन रक्षा के आवरण का प्रयोग किया है ।

मेरे विचार से इस विधेयक के स्थान पर निम्नलिखित बातों पर सरकार अधिक ध्यान दे तो ठीक होगा —

1. बच्चों को, स्कूलों में और घरों में इन सब दुष्पापों से व उनके दुष्परिणामों से भली भांति अवगत कराना ताकि वे अपने जीवन में सजग रहें ।

2. उन्हें आत्म-संयम की और नियमित जीवन यापन की शिक्षा नित्य शिक्षा संस्थाओं व घरों में मिलनी चाहिए । वे उस शिक्षा के अनुकूल चल सकें इसके कुछ अन्य बातों पर भी ध्यान देना चाहिए जैसे कि उन्हें यथेष्ट व्यायाम, परिश्रम, नित्य उपासना अध्ययन आदि में लगाये रहना और उन्हें उच्च कोटि के मनोरंजन आदि में लगाये रखना । उन्हें नियमित रूप से व्यस्त रखने से मन की शुद्धि और आत्म संयम सुगम हो जायेगा ।

3. वयोवृद्ध लोगों को स्वतः भी आदर्श होना पड़ेगा। जिस देश के वयोवृद्ध, नेता, प्रतिनिधि आदि स्वयं चरित्रभ्रष्ट हों और जहां गर्भपात जैसे कर्म वैध हों वहां के बच्चों से हम नैतिकता की अपेक्षा कहां तक कर सकेंगे। वासना ऐसी वस्तु है कि उसे जितना ही सीमित रखा जाये, सीमित रहेगी और जितना ही प्रज्जवलित किया जाये प्रज्जवलित होगी। हरेक यवा पुरूष हर सुन्दरी युवती के पीछे लगने की हिम्मत क्यों नहीं करता ? क्योंकि वह अपनी वासना को बुद्धि द्वारा संयत व सीमित रखता है। वह अपनी सीमा जानता है और असंयम के दुष्परिणाम को भी जानता है। उसके ऊपर अच्छी शिक्षा व अच्छे वातावरण का प्रभाव होता है। उसमें आत्म संयम और आत्माभिमान होता हैं और सामाजिक नियमों का भी उसे ध्यान रहता है। किन्तु जो इन सब बातों का उल्लंघन करते हैं उनके लिये यथोचित शिक्षा और यथोचित दण्ड दोनों ही प्राविधान होना चाहिये।

आधुनिक मां बाप को अधिक से अधिक समय देकर बच्चों को जीवनोपयोगी सभी ज्ञान दे कर स्वयं भी उनके लिए उदाहरण बन कर उन्हें आदर्श और महत्वाकांक्षी बनने के लिए प्रोत्साहित करना चाहिये। बच्चे कुसंगति में बैठ कर समय नष्ट करें ऐसा न होने दें। अक्सर मां बाप स्वयं इतना गड़बड़ जीवन बिताते हैं कि बच्चों के सामने आदर्श की बातें करने का उनका मुंह ही नहीं होता। बच्चे लावारिसों की तरह नौकरों के या बड़े हुए तो इधर उधर की बुरी संगति में फिरा करते हैं। उन्हें एक नागरिक की जिम्मेदारी का कोई ज्ञान नहीं होता। मां बाप को चाहिए कि बच्चों को ब्रह्म बेला में जगायें, नियम से स्नान, पूजा अध्ययन आदि में लगायें। उचित ज्ञान देकर उन्हें धर्म, समाज, और देश के प्रति उनकी जिम्मेदारी नित्य स्मरण कराय। तभी वह आदर्श बनेंगे व संयम सीखेंगे। तभी हमारी बढ़ती हुई जन संख्या का और बढ़ते हुए दुराचार का समाधान होगा और इस विधेयक की आवश्यकता कतई न पड़ेगी।

यह विधेयक निश्चय ही किसी भारतीय के मष्तिष्क की उपज नहीं हो सकती। इसका आधार किसी पाश्चात्य देश के व्यक्ति का मस्तिष्क है और हमें चाहिए कि हम यह जहां की उपज है वहां इसे वापस कर दें। हमारे देश में इसकी आवश्यकता नहीं है। में धैर्यपूर्वक, धर्म पूर्ण शिक्षारुपी मार्ग का ही अनुसरण करने के पक्ष में होते हुए इस अमानुषिक विधेयक का पूण विरोध करती हूं।

बिम्बुमती दास

Bill No. XXII-B of 1969

THE MEDICAL TERMINATION OF PREGNANCY BILL, 1969

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short title, extent and commencement

1. (1) This Act may be called the Medical Termination of Pregnancy Act, 1970.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "guardian" means a person having the care of the person of a minor or a lunatic; * * *

(*b*) "lunatic" has the meaning assigned to it in section 3 of the Indian Lunacy Act, 1912; 4 of 1912.

(*c*) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority; 9 of 1875.

(*d*) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (*h*) of section 2 of the Indian Medical Council Act, 1956, * whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act. 102 of 1956

When pregnancies may be terminated by registered medical practitioners.

3. (*1*) Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act. 45 of 1860.

(*2*) Subject to the provisions of sub-section (*4*), a pregnancy may be terminated by a registered medical practitioner,—

(*a*) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(*b*) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of opinion, formed in good faith, that—

(*i*) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(*ii*) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(*3*) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (*2*), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (*a*) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(*b*) Save as otherwise provided in clause (*a*), no pregnancy shall be terminated except with the consent of the pregnant woman.

Place where pregnancy may be terminated.

4. No termination of pregnancy shall be made in accordance with this Act at any place other than—

(*a*) a hospital established or maintained by Government, or

(*b*) a place for the time being approved for the purpose of this Act by Government.

Sections 3 and 4 when not to apply.

5. The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life*** of the pregnant woman.

Explanation.—For the purposes of this section, so much of the provisions of clause (*d*) of section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

Power to make rules.

6. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act; and

(*b*) such other matters as are required to be, or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to make regulations.

7. (*1*) The State Government may, by regulations,—

(*a*) require any such opinion as is referred to in sub-section (*2*) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;

(*b*) require any registered medical practitioner, who terminates a pregnancy, to give notice of such termination and such other information relating to the termination as may be specified in such regulations;

(*c*) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of notices given or information furnished in pursuance of such regulations.

(*2*) The notice given and the information furnished in pursuance of regulations made by virtue of clause (*b*) of sub-section (*1*) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(*3*) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (*1*) shall be liable to be punished with fine which may extend to one thousand rupees.

Protection of action taken in good faith.

8. No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

B. N. BANERJEE,

Secretary.

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